

## **REMARKS**

### **Amendment to the Specification**

The Examiner has indicated that the amendments to the specification submitted July 10, 2006 are non-compliant due to failure to meet the requirements of 37 CFR §1.121. The specification has been amended herein to comply with these requirements. As discussed below, Applicants believe no new matter has been added by these amendments.

The present amendments to the specification cite paragraph and page numbers from the Applicants' originally submitted application (November 24, 2003).

### **Amendments to the Claims**

Claims 1-3, 12-14, 21, 25, 30, 32, 36, 49, 51-73 are pending in this application. Claims 4-11, 15-20, 22-24, 26-29, 31, 33-35, 37-48 and 50 have been canceled. Amendments to claims 1, 12-14, 21, 25, 30, 32, 36, and 49 have been made to more clearly define the invention. Claims 53-73 have been added, of which only claim 60 is an independent claim. Applicants believe no new matter has been added by the changes and additions to the claims.

The present listing of claims will replace all prior versions of listings of claims in the application.

### **Status of the Claims and General Summary of Claim Rejections**

Claims 1, 2, 4-13, 15-19, 21, 29, 31-37, 39-47, 49, and 50 were rejected under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,514,218 to Yamamoto (hereinafter referred to as Yamamoto).

Claims 1-4, 6-9, 12, 15, and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,263,491 to Thornton (hereinafter referred to as Thornton).

Claims 1, 2, 4, 5, 12-14, 17-19, 21, 25, and 30 were rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,275,159 to Griebel (hereinafter referred to as Griebel).

Claims 24 and 52 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto, as discussed above, and further in view of US Patent No. 6,432,061 to Nissila et al (hereinafter referred to as Nissila).

Claims 23, 26-28, and 51 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto, as discussed above, and further in view of US Patent No. 6,168,568 to Gavriely (hereinafter referred to as Gavriely).

### **35 U.S.C. § 102(e) Rejections per Yamamoto**

Claims 1, 2, 4-13, 15-19, 21, 29, 31-37, 39-47, 49, and 50 were rejected under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,514,218 to Yamamoto (hereinafter referred to as Yamamoto). Applicants respectively traverse this rejection.

Claim 1 has been amended to recite a housing containing the vibration sensor and the position sensor, adapted to be coupled to the patient. Yamamoto does not teach a

system for monitoring a patient in which a housing contains a vibration sensor and a position sensor. In fact, Figures 1 and 4 of Yamamoto teach *away* from such a housing, as they show two separate housings containing a sound detection unit (item 3 in Figure 1) and a posture detection unit (item 7 in Figure 4), respectively. Accordingly, it is respectfully submitted that claim 1 is both not anticipated by Yamamoto and also not obvious in light of Yamamoto, and is thus allowable.

Claim 1 has also been amended to remove the term "substantially adjacent." Thus, it is respectfully submitted that the comments by the Examiner addressing the term "substantially adjacent" (Office Action, page 17) are now moot.

Claim 32 has been amended to recite coupling a vibration sensor for collecting tracheal vibration information from the patient to a portion of the patient's body and coupling to the portion of the body a position sensor that changes state depending upon its orientation with respect to gravity, such that the position sensor provides information that is indicative of the orientation with respect to gravity of the portion of the patient's body to which it is coupled. Yamamoto does not teach coupling a vibration sensor and a position sensor to a portion of the patient's body, and in fact again teaches away from such coupling, as follows. Figure 1 in Yamamoto shows housing 51 (containing posture detection unit 7 per Figure 4) coupled to the patient's chest below the level of the axillae. It further shows sound detection unit 3 coupled to a different portion of the patient's body, i.e. the neck well above the level of the axillae. Accordingly, it is respectfully submitted that claim 32 is allowable over Yamamoto.

Having overcome the rejections of claims 1 and 32 based on Yamamoto, it is respectfully submitted that the rejections of dependent claims 2, 12-13, 21, 36, and 49 as anticipated by Yamamoto are also overcome.

### **35 U.S.C. § 102(b) Rejections per Thornton**

Claims 1-4, 6-9, 12, 15, and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,263,491 to Thornton (hereinafter referred to as Thornton). Applicants respectively traverse this rejection.

Claim 1 has been amended as noted above.

Thornton does not teach a system for monitoring a patient in which a housing contains a vibration sensor and a position sensor. As with Yamamoto, Figure 1 of Thornton teaches away from such a housing, as it shows two separate housings containing mastication microphone M1 and accelerometer 16, respectively.

Accordingly, it is respectfully submitted that claim 1 is allowable over Thornton.

Having overcome the rejection of claim 1 based on Thornton, it is respectfully submitted that the rejections of dependent claims 2-3, and 12 as anticipated by Thornton are also overcome.

### **35 U.S.C. § 102(b) Rejections per Griebel**

Claims 1, 2, 4, 5, 12-14, 17-19, 21, 25, and 30 were rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,275,159 to Griebel (hereinafter referred to as Griebel). Applicants respectively traverse this rejection.

Claim 1 has been amended as noted above.

Again, as the term “substantially adjacent” has been removed from the claims, the comments by the Examiner addressing that term (Office Action, page 18) are now moot.

Furthermore, Griebel does not teach a system for monitoring a patient in which a housing contains a vibration sensor and a position sensor. Figure 2 of Griebel again

teaches away from such a housing, as it shows two separate housings containing the laryngeal microphone (item 4 in Figure 2) and position detector (item 6 in Figure 2), respectively.

Accordingly, it is respectfully submitted that claim 1 is allowable over Griebel.

Having overcome the rejection of claim 1 based on Griebel, it is respectfully submitted that the rejections of dependent claims 2, 12-14, 21, 25, and 30 as anticipated by Griebel are also overcome.

#### **35 U.S.C. § 103(a) Rejections per Yamamoto in view of others**

Claims 23-24, 26-28, and 51-52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yamamoto, as discussed above, and further in view of others.

Applicants respectively traverse this rejection.

As discussed above, having overcome the rejections of independent claims 1 and 32 in view of Yamamoto, it is respectfully submitted that the rejections of dependent claims 51-52 under 35 U.S.C. §103(a) are also overcome.

The other prior art cited by the Examiner has been considered. No response is deemed necessary.

## CONCLUSION

Applicants respectfully request the entry of the amendments to the specification, as these amendments do not enter new subject matter into the disclosure.

With respect to the rejections under 35 U.S.C. §102, none of the cited references (Yamamoto, Thornton, and Griebel) shows combining the vibration sensor and position sensor in a single housing, and in fact all explicitly teach away from such a combination. Thus, it is respectfully submitted that the claims of the present invention are not anticipated by, nor rendered obvious by, these references.

As the independent claims are allowable, all of the dependent claims are similarly allowable.

While the Applicant believes a *Notice of Allowance* is now warranted, the Examiner is invited to contact the Applicant or Kenneth M. Kaslow, Esq. with any questions concerning the present application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Sotos". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Sotos".

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